

MERCHANT, GOULD, SMITH, EDELL, WELTER & SCHMIDT

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: INTERVERTEBRAL IMPLANT WITH REDUCED CONTACT AREA AND METHOD

The specification of which

- a. is attached hereto
- b. was filed on March 20, 1998 as application serial no. 09/045,213 and was amended on (if applicable) (in the case of a PCT-filed application) described and claimed in international no. filed and as amended on (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. no such applications have been filed.
- b. such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

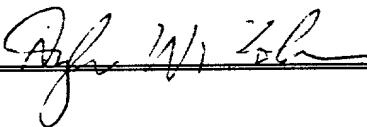
Albrecht, John W.	Reg. No. 40,481	Lasky, Michael B.	Reg. No. 29,555
Ansems, Gregory M.	Reg. No. P-42,264	Lindquist, Timothy A.	Reg. No. 40,701
Batzli, Brian H.	Reg. No. 32,960	Lynch, David W.	Reg. No. 36,204
Beard, John L.	Reg. No. 27,612	Mau, Michael L.	Reg. No. 30,087
Berman, Charles	Reg. No. 29,249	Maunu, Leroy D.	Reg. No. 35,274
Black, Bruce E.	Reg. No. P-41,622	McDaniel, Karen D.	Reg. No. 37,674
Bogucki, Raymond A.	Reg. No. 17,426	McDonald, Daniel W.	Reg. No. 32,044
Bruess, Steven C.	Reg. No. 34,130	McIntyre, Iain A.	Reg. No. 40,377
Byrne, Linda M.	Reg. No. 32,404	Mueller, Douglas P.	Reg. No. 30,300
Canady, Karen S.	Reg. No. 39,927	Nasiedlak, Tyler L.	Reg. No. 40,099
Carlson, Alan G.	Reg. No. 25,959	Nelson, Albin J.	Reg. No. 28,650
Carter, Charles G.	Reg. No. 35,093	Orler, Anthony J.	Reg. No. 41,232
Caspers, Philip P.	Reg. No. 33,227	Pauly, Daniel M.	Reg. No. 40,123
Chiapetta, James R.	Reg. No. 39,634	Plunkett, Theodore	Reg. No. 37,209
Clifford, John A.	Reg. No. 30,247	Pytel, Melissa J.	Reg. No. P-41,512
Cooper, Victor G.	Reg. No. 39,641	Reich, John C.	Reg. No. 37,703
Crawford, Robert	Reg. No. 32,122	Reiland, Earl D.	Reg. No. 25,767
Daignault, Ronald A.	Reg. No. 25,968	Rittmaster, Ted R.	Reg. No. 32,933
Daley, Dennis R.	Reg. No. 34,994	Schmaltz, David G.	Reg. No. 39,828
Dalglash, Leslie E.	Reg. No. 40,579	Schmidt, Cecil C.	Reg. No. 20,566
Daulton, Julie R.	Reg. No. 36,414	Schuman, Mark D.	Reg. No. 31,197
DeVries Smith, Kate	Reg. No. P-42,157	Schumann, Michael D.	Reg. No. 30,422
DiPietro, Mark J.	Reg. No. 28,707	Sebald, Gregory A.	Reg. No. 33,280
Edell, Robert T.	Reg. No. 20,187	Sharp, Janice A.	Reg. No. 34,051
Epp Ryan, Sandra	Reg. No. 39,667	Skoog, Mark T.	Reg. No. 40,178
Farber, Michael B.	Reg. No. 32,612	Smith, Jerome R.	Reg. No. 35,684
Funk, Steven R.	Reg. No. 37,830	Soderberg, Richard	Reg. No. -P-43,352
Glance, Robert J.	Reg. No. 40,620	Sumner, John P.	Reg. No. 29,114
Golla, Charles E.	Reg. No. 26,896	Summers, John S.	Reg. No. 24,216
Gorman, Alan G.	Reg. No. 38,472	Tellekson, David K.	Reg. No. 32,314
Gould, John D.	Reg. No. 18,223	Trembath, Jon R.	Reg. No. 38,344
Gregson, Richard	Reg. No. P-41,804	Underhill, Albert L.	Reg. No. 27,403
Gresens, John J.	Reg. No. 33,112	Vandenburgh, J. Derek	Reg. No. 32,179
Hamre, Curtis B.	Reg. No. 29,165	Victor, David W.	Reg. No. 39,867
Hillson, Randall A.	Reg. No. 31,838	Welter, Paul A.	Reg. No. 20,890
Johnston, Scott W.	Reg. No. 39,721	Whipps, Brian	Reg. No. P-43,261
Kastelic, Joseph M.	Reg. No. 37,160	Williams, Douglas J.	Reg. No. 27,054
Kettelberger, Denise	Reg. No. 33,924	Witt McDonald, Jonelle	Reg. No. P-41,980
Komanduri, Janaki	Reg. No. 40,684	Wood, Gregory B.	Reg. No. 28,133
Kowalchyk, Alan W.	Reg. No. 31,535	Wood, William J.	Reg. No. P-42,236
Kowalchyk, Katherine M.	Reg. No. 36,848	Xu, Min S.	Reg. No. 39,536
Lacy, Paul E.	Reg. No. 38,946		
Larson, James A.	Reg. No. 40,443		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:

Merchant, Gould, Smith, Edell,
Welter & Schmidt
3100 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4131

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name Of Inventor	Family Name Kohrs	First Given Name Douglas	Second Given Name W.
0	Residence & Citizenship	City Edina	State or Foreign Country Minnesota	Country of Citizenship U.S.A.
1	Post Office Address	Post Office Address 7432 Hyde Park Drive	City Edina	State & Zip Code/Country MN 55439/USA
Signature of Inventor 201: 			Date:	5/15/78

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served through effective patent examination occurs when, at the time an application is being examined, the Office is aware of and considers the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.